

TRANS-TEXAS ENERGY, INC.

IBLA 81-309

Decided July 22, 1981

Appeals from decisions of the Utah State Office, Bureau of Land Management, rejecting in part oil and gas lease offers U-46292 and U-46137.

Affirmed.

1. Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases:
Noncompetitive Leases

A noncompetitive oil and gas lease may only be issued to the first qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured.

APPEARANCES: Thomas J. Nance, Esq., Jo Anna Goddard, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

By Secretarial Order No. 3051 of April 7, 1980, the suspension against filing oil and gas lease offers imposed by Secretarial Order No. 3049 was lifted, effective June 16, 1980. A simultaneous filing period for over-the-counter lease offers was established from start of business June 16 until close of business June 23, 1980. During the simultaneous filing period Trans-Texas Energy, Inc. (Trans-Texas), filed several lease offers over-the-counter for public lands in Utah.

In the drawing to establish priority of consideration, lease offers U-46137 and U-46292 of Trans-Texas were given priority ahead of partly conflicting lease offers U-46245 and U-46396.

Decisions by the Utah State Office, Bureau of Land Management (BLM), rejected the offers of Trans-Texas as to the lands in conflict

with offers U-46245 and U-46396 because Trans-Texas had not submitted its corporate qualifications sooner than did the competing offerors. Trans-Texas Energy, Inc., appealed.

With respect to corporate qualifications for oil and gas leasing of Federal lands, 43 CFR 3102.2-5(a)(3), 45 FR 35162 (May 23, 1980), effective June 16, 1980, provides:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

* * * * *

(3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing.

Citing this regulation, BLM, by letter dated July 10, 1980, advised Trans-Texas that it was required to submit a complete list of corporate officers, identifying those empowered to act on behalf of the corporation in matters relating to Federal oil and gas leasing, before its offers to lease would be complete and ripe for consideration by BLM.

Before Trans-Texas submitted the required information, offerors of the conflicting lease offers did submit the required information as to each of them.

On appeal, appellant states that when it filed its offers the corporate qualifications on file with BLM were in compliance with the pertinent regulation as it was in effect prior to June 16, 1980. Appellant asserts that it "commenced its compliance with the [BLM's] request on July 25, 1980," within a reasonable time after being informed of the deficiency. Appellant argues that the omission was minor and requests that its leases be issued to include all the lands originally applied for. It also asserts that other BLM state offices have allowed offerors up to 2 years to update their corporate qualification files.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Cotton Petroleum Corp., 38 IBLA 271 (1978). As the subject lease offers were filed, neither comported with the regulations and so each was defective. The Department has consistently held that a noncompetitive oil and gas lease offer which is defective earns no priority on the date of its filing, but where the defect is "curable" priority is established as of the date the defect is remedied. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). In over-the-counter filings, priority of consideration is earned from the time the curative data is filed. Bear Creek Corp., 5 IBLA 202 (1972).

Appellant was on notice and should have been aware of the new regulatory requirements published in the Federal Register of May 23, 1980. BLM's instruction to appellant to conform its qualifications to the new regulatory requirements did not maintain the priority of consideration determined by the drawing as no rights or priorities may be established without authority of law. See Barbara Niernberger, 53 IBLA 112, 117 (1981). The Secretary's duly promulgated regulations are binding upon the Department and must be complied with. Exxon Co., U.S.A., 45 IBLA 313 (1980).

Appellant's allegations as to questionable practices at other BLM state offices are of no avail.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge